



United States Department of the Interior

BUREAU OF RECLAMATION
Mid-Pacific Regional Office
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Sacramento, California 95825-1898

IN REPLY
REFER TO:
MP-100
ENV-7.00

FEB 13 2008

Mr. John McCamman
Acting Director
Department of Fish and Game
1416 Ninth Street, Room 1205
Sacramento, CA 95814

Subject: Designation of Longfin Smelt as a Candidate Species Under the California Endangered Species Act

Dear Mr. McCamman:

This is a follow-up to our conversation regarding the designation of longfin smelt as a candidate species under the California Endangered Species Act (CSEA). From our discussion and published news articles, Reclamation understands that the California Fish and Game Commission (Commission) adopted the California Department of Fish and Game's (DFG) proposed action to designate long fin smelt as a candidate species and a regulation that would allow incidental take of longfin smelt during the candidacy period. That regulation contains terms for the adaptive control of Old and Middle River flows over the next 6 months that are similar to those imposed by the United States Eastern District Court of California's December, 2007 Interim Order following Summary Judgment and Evidentiary Hearing in *Natural Resources Defense Council v. Kempthorne, et al*, (1:05-cv-1207 OWW GSA), but focused on the protection of longfin smelt. Furthermore, Reclamation understands that these terms do not go into effect until certain State administrative processes are completed, which should occur by the end of this month.

During the Commission meeting and at the February 8, 2008, Bay Delta Conservation Plan (BDCP) Steering Committee meeting, some participants assumed that Reclamation would not cooperate with the State in trying to achieve the environmental conditions sought by DFG for the protection on longfin smelt over the next 6 months. As noted by Reclamation's representative at the BDCP meeting, this is an incorrect assumption. Reclamation, along with the U.S. Fish and Wildlife Service, certainly needs to evaluate the environmental conditions sought by DFG for the protection on longfin smelt over the next 6 months; however, Reclamation has a long-standing practice of cooperating with California in protecting at risk fish species.

Reclamation will continue to cooperate as a partner agency. As you know, the Central Valley Project Improvement Act (CVPIA), Title XXXIV of Public Law 102-575, October 30, 1992, has among its purposes, "... to protect, restore, and enhance fish, wildlife and associated habitats in the Central Valley" and "... to contribute to the State of California's interim and long-

term efforts to protect the San Francisco Bay/Sacramento-San Joaquin Delta Estuary."

Reclamation has numerous programs and tools at its disposal to provide for fish and wildlife, including CVPIA sections 3406(b)(1) and 3406(b)(3), the Environmental Water Account, authorized by Public Law 108-361, and numerous agreements that were signed as part of the CALFED Bay-Delta Programmatic Record of Decision. In fact, since 1993 Reclamation has managed 18 million acre-feet of Central Valley Project water (1.2 million acre-feet of water annually) for fish and wildlife purposes, at a total estimated value of \$1.8 billion dollars. During this same period of time, the U.S. Congress appropriated at least \$1.36 billion dollars (Water Related Resources, Restoration Funds, Calfed Bay Delta funds) for use in implementing environmental actions within the Central Valley of California. Moreover, the Environmental Water Account has a substantial federal budget allocation this year.

In addition, project effects on longfin smelt will be analyzed as part of our biological assessment of the Long-Term operations of the Central Valley Project and State Water Project (Project Operations). U.S. Fish and Wildlife Service expects to complete the Biological Opinion in September of this year. Once this Biological Opinion is completed, Reclamation and the California Department of Water Resources will have the scientific analysis to evaluate the kinds of measures that may be needed in the future to protect this species.

However, our most promising efforts are those related to BDCP where a long-term Conservation Plan is being developed to address all the stressors that are affecting at-risk fish species in the Delta. Reclamation is committed to the BDCP process. A recommendation in the Commission proposal states:

"Should Reclamation refuse to cooperate to protect longfin smelt in the operation of the CVP, one solution would be for the Commission to request an action by the State Water Resources Control Board (SWRCB) which would be complementary to the Proposed 2084 regulation."

Such a request of the SWRCB is not necessary, and any SWRCB action would divert important and critical resources away from and delay both the biological assessment for project operations and BDCP—efforts that have such great promise in helping to address this and other issues on both a near-term and long-term basis.

Reclamation has been and will continue to be a partner with the State of California to work through the longfin smelt issues over the next 6 months.

If you have any questions or require additional clarification, please call me at 916-978-5013.

Sincerely,


John F. Davis
Deputy Regional Director